

CHARNER T. SCAIFE, ADMINISTRATOR OF GILBERT  
STALKER.

[To accompany Bill H. R. C. C. No. 82.]

MARCH 2, 1860.

Mr. HOARD, from the Committee on Claims, made the following

**REPORT.**

*The Committee on Claims, to whom was referred the report of the Court of Claims No. 143, with a bill for the relief of Charner T. Scaife, administrator of Gilbert Stalker, have had the same under consideration, and make the following report:*

The claim in this case is for payment of money due to Gilbert Stalker for the use of the steamboat "James Adams," under an agreement with General Worth. The case is fully stated by the Court of Claims. This committee fully concurs with the opinion of the court, and report back the bill to the House without amendment, with a recommendation that it pass.

REPORT C. C. No. 143.

CHARNER T. SCAIFE, ADMINISTRATOR OF GILBERT  
STALKER, DECEASED.

[To accompany Bill H. R. C. C. No. 82.]

DECEMBER 15, 1857.—Referred to the Committee on Claims.

The COURT OF CLAIMS submitted the following

## REPORT.

*To the honorable the Senate and House of Representatives of the United  
States in Congress assembled:*

The Court of Claims respectfully presents the following documents  
in the case of

CHARNER T. SCAIFE, ADMINISTRATOR OF GILBERT  
STALKER, DECEASED, *vs.* THE UNITED STATES.

1. The petition of the claimant.
  2. Documents from the War Department transmitted to the Senate.
  3. Letters of administration filed in the case and transmitted to the Senate.
  4. Documents referred to in the opinion of the court and transmitted to the Senate.
  5. Statement of J. D. McPherson, esq., by agreement admitted as evidence, transmitted to the Senate.
  6. Claimant's brief.
  7. Opinion of the court.
  8. Bill for the relief of claimant.
- Other documents received from the Senate in this case are returned to the Senate.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the  
[L. s.] seal of said court, at Washington, this seventh day of Decem-  
ber, A. D. 1857.

SAM'L H. HUNTINGTON,  
*Chief Clerk Court of Claims.*

## COURT OF CLAIMS.

CHARNER T. SCAIFE *vs.* THE UNITED STATES.*To the honorable the Judges of the Court of Claims :*

Charner T. Scaife, a citizen of the State of South Carolina, respectfully represents that in the year 1839 Gilbert Stalker and N. B. Hill were the owners as partners of a certain steamboat called the "James Adams," worth at least the sum of \$30,000 ; that during the Seminole war, which was conducted on the part of the United States by the late General Worth, the said boat was chartered to the government at the rate of \$2,500 per month ; that subsequently, to wit, on the 28th of April, 1841, a new charter was entered into at the rate of \$2,000 per month ; this charter is to be found in the file of papers referred to this court by the Senate ; that at the time of entering into this charter it was never contemplated that the said boat was to be exposed to any other risks than the acts of the enemy, and such as belong to the use of said boat in waters fitted for the purposes of navigation by such a vessel ; that after a few months' service under this contract, it was determined by General Worth to employ the boat in the navigation of Pease creek and the upper Colorouhatchie. The distance these streams were to be ascended made it certain that the "James Adams" could not be used for this purpose without incurring great damage, if not destruction. The streams were shallow, tortuous, and overhung with oaks and other trees. These were not the risks and dangers which the owners of the boat undertook to incur. The compensation was also inadequate, and the general in command was informed that the boat would not incur them. General Worth, deeming the exigencies of the service demanded it, agreed with Stalker that if he would continue the boat in service she should receive an additional compensation of \$500 per month ; and on this express agreement the boat continued the service, and in doing so received great damage. For the evidence of this contract your petitioner refers to the correspondence between the Hon. William C. Preston, then senator from South Carolina, and E. A. Ogden, assistant quartermaster with General Worth, hereto appended and made part of the petition. This contract was entered into on the 1st of August, 1841, and continued to the 28th of September, as he is informed. He states, however, it is asserted, that the accounts at the department show that the boat was paid off and discharged on the 9th of July, 1842.

Your petitioner further shows that at a subsequent period, to wit, on the 18th of September, 1842, a new charter was entered into for the said boat, and that on the 5th of October, while lying at anchor at Cedar Keys, and made fast at that place, the said boat was lost in a gale of wind, owing to the government wharf giving way, it being in a defective and rotten condition ; that the said Stalker was advised that the government was liable for the loss thus occasioned, as an individual would be, and immediately presented his claim to Congress for the whole loss, expecting thus to receive all he was entitled to.

This claim was reported on adversely in the House of Representatives on the 29th of December, 1843, 28th Congress, 1st session, No. 1, the report denying the liability of the government on this ground; that subsequently to this the said Stalker died, to wit, on the — day of —, 18—, and that N. B. Hill, as survivor and administrator, petitioned Congress for the additional remuneration stipulated by General Worth. On this petition a favorable report was made in the Senate by Mr. Mason, on the 23d of January, 1849, No. 261, bill No. 397, 30th Congress, 2d session, and an adverse report was made in the House, No. 498, 31st Congress, 1st session.

Your petitioner further shows that subsequent to this period the said Hill died, to wit, on the 2d day of December, 1854, and that letters of administration have been granted to him by the ordinary of Richland district, in said State, the place of Hill's domicil at the period of his death.

Your petitioner further states that no part of the said claim has been assigned away to others, and that the whole amount, together with the interest due thereon, is justly due to him.

P. PHILLIPS,  
*Solicitor for Petitioner.*

Personally appeared \_\_\_\_\_ before me \_\_\_\_\_, who, being duly sworn, says that the facts set forth in the above petition are true to the best of his knowledge.

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*Copy of a letter from Captain E. A. Ogden to General Worth.*

MOUTH OF THE RIO GRANDE, *January 28, 1847.*

GENERAL: I recollect very distinctly that you promised Mr. Stalker, at Tampa Bay, the increase of \$500 per month he speaks of, for the services of his steamer James Adams, or, in other words, you promised him the renewal of the compensation provided for in his original charter. I cannot now recollect the date of the promise, but think it was made just before your expedition to Pease creek, and was based upon the destructive nature of the service required on that river and on the Colorouhatchie. No formal order was, however, given for the change of pay; and in settling with Mr. Stalker I was compelled to adhere to the terms of my own contract with him, at \$2,000 per month.

It was a losing business for Stalker, whose boat was finally lost altogether at Cedar Keys, and with it, I believe, the last relic of his fortune—the last source of income. The old man was, indeed, terribly prosy, but was honest and unfortunate; and a good word from you would not only be just and generous, but undoubtedly, in the present case, the valuable basis of timely relief.

I am, general, very truly yours,

E. A. OGDEN.

General W. J. WORTH,  
*U. S. Army, Palo Alto.*

Written on the above letter is the following :

I have distinct recollection of the circumstances set forth by Captain Ogden, in respect to the charter of the steamer James Adams, and of my assurance to Mr. Stalker, that if he continued the vessel in the public service, to which the vessel was at that time indispensable, he should be paid an amount equal to his original contract ; and until the subject was brought to my knowledge as above I had supposed my promise as commander, known to Captain Ogden, quartermaster, had been fulfilled.

W. J. WORTH.

MY DEAR SIR: If your recollection coincides with the above statement, I pray you to say so, in justice to a worthy and unfortunate man, provided it does not take you a moment to do so ; for I know that such a moment would be taken from your own fame and the good of the country.

Your friend and servant,

WM. C. PRESTON.

General WORTH.

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*Copy of a letter from E. A. Ogden.*

CINCINNATI, August 11, 1848.

SIR: I find, on making the examination of my old books, which I promised yesterday, that I chartered the steamer James Adams, of Mr. Stalker, on the 29th December, 1840, at \$2,500 per month. The boat remained under my control at that rate of compensation until the 28th of February, 1841. Major Charles Thomas, quartermaster at Cedar Keys, assumed control of the steamer, and settled her accounts from the 1st of March to the 30th of June, 1841. On the 28th of April he appears to have made a new charter of the James Adams, at the reduced rate of \$2,000 per month, and she was paid for accordingly, by Major Thomas, until the 30th of June, and by myself from the 1st of July to 31st December.

On the 17th of February, 1842, I left Florida, and turned over the James Adams, with a statement of the arrearages for her services, from the 1st of January to the 17th of February, to my successor at Tampa Bay, Captain McKissick. By an examination of his papers, the remaining history of the services of the James Adams can doubtless be completed.

It was while the James Adams was employed at \$2,000 per month that General Worth promised Mr. Stalker an increase of five hundred dollars per month to the compensation allowed him for the services of his boat ; this increase would simply be a restoration of the rate at which the boat was originally chartered, as you will see from my statement ; the promise referred to was made by General Worth about the 1st of August, 1841.

Very respectfully, your obedient servant,

E. A. OGDEN,  
Assistant Quartermaster.

Hon. WADDY THOMPSON,  
Washington, D. C.

*Copy of a letter from Captain E. A. Ogden.*

CINCINNATI, January 4, 1849.

DEAR SIR: I have duly received your communication of the 29th ultimo, and regret to learn from it that you have been unsuccessful in prosecuting the claim of Mr. Stalker's personal representatives for the services of his steamboat in Florida. The promise of General Worth to Mr. Stalker, which I mentioned in my letter of the 11th of August, *was predicated upon the unusually severe and destructive service required of the boat*, and General Worth intended, I think, to accomplish his promise by directing me to make a new charter. The want of other steamers suited to our purposes, and the exigencies of the service at the time, rendered it necessary to run the James Adams so constantly that I remember stating to General Worth on one occasion that his orders had not permitted the boilers of the boat to cool for twenty-five days. Part of the time mentioned in my letter of the 11th of August it was found necessary to employ the steamer on the upper Colorouhatchie river, where, in a narrow, tortuous stream, and overhanging live-oaks, the boat received great injuries. The service demanded of the boat during the last five months of 1841 left it in such a condition that Mr. Stalker quite abandoned the idea of undertaking to repair the boat or refitting her, after being discharged, for any commercial purpose. In December, 1840, when I chartered the James Adams, it was in fine condition, having just arrived from a northern ship-yard, and the boat was then appraised, I think, at \$30,000. A year afterwards I am satisfied it could not have been sold for \$10,000. The rapid deterioration of the steamer, from the *unusual* service required of it, the promise of General Worth of an increased payment on that account, and the fact that Mr. Stalker would certainly have withdrawn his boat from the service, if he had not expected the increase, make the payment of the claim, within the dates indicated in my letter of the 11th August, a matter of common justice and good faith.

Very respectfully, your obedient servant,

E. A. OGDEN,  
*Assistant Quartermaster.*

Hon. WADDY THOMPSON,  
*Washington, D. C.*

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IN THE COURT OF CLAIMS.

SCAIFE, ADMINISTRATOR OF STALKER, *vs.* THE UNITED STATES.

Opinion of the court delivered by Judge BLACKFORD.

This is a claim for a certain sum alleged to be due the estate of Gilbert Stalker, deceased, for certain service of the steamboat James Adams, of which Mr. Stalker was the owner.

The boat was, on the 29th of December, 1840, chartered for the United States by Captain Ogden, quartermaster, at \$2,500 a month.



The service of the boat under the charter party was in the Seminole war, on the west side of Florida. The boat was discharged on the 26th of April, 1841.

On the 28th of April, 1841, the same boat was chartered on the part of the United States by Major Thomas, quartermaster, at \$2,000 a month, and was in service on the west side of Florida, in the war with the Seminoles, until the 9th of July, 1842, when she was discharged.

On the 28th of September, 1842, Captain Hill, quartermaster, chartered said boat for the United States at \$1,800 a month, for a service similar to that above mentioned.

We have not been furnished with the charter party of the 29th of December, 1840. By the others, copies of which are before us, the boat was chartered for one month, and as much longer as might be required by the United States.

The amount chargeable to the United States for the service of the boat under those three charter parties has been long since paid. But the claimant alleges that his intestate, Stalker, is entitled to \$500 a month for the service of said boat from the 1st of August, 1841, to the 9th of July, 1842, in addition to the \$2,000 a month received by him under the charter party of the 28th of April, 1841.

This claim for additional pay is founded on a promise made by General Worth, who was the commanding officer, to Mr. Stalker, the owner of the boat, about the 1st of August, 1841.

The promise which was made whilst the boat was in service under the contract of the 28th of April, 1841, is proved by the letters of General Worth and Captain Ogden.

The letter of Captain Ogden of the 28th of January, 1847, to General Worth, says:

"I recollect very distinctly that you promised Mr. Stalker, at Tampa Bay, the increase of \$500 per month he speaks of, for the services of his steamer James Adams, or, in other words, you promised him the renewal of the compensation provided for in his original charter. I cannot now recollect the date of the promise, but think it was made just before your expedition to Pease creek, and was based upon the destructive nature of the service required on that river and on the Colorouhatchie. No formal order was, however, given for the change of pay; and in settling with Mr. Stalker I was compelled to adhere to the terms of my own contract with him, at \$2,000 per month."

To that letter General Worth answered as follows:

"I have distinct recollection of the circumstances set forth by Captain Ogden in respect to the charter of the steamer James Adams, and of my assurance to Mr. Stalker that if he continued the vessel in the public service, to which the vessel was at that time indispensable, he should be paid an amount equal to his original contract; and until the subject was brought to my knowledge as above I had supposed my promise as commander, known to Captain Ogden, quartermaster, had been fulfilled."

The letter of Captain Ogden, assistant quartermaster, of January 4, 1849, to Mr. Thompson, says:

"The promise of General Worth to Mr. Stalker, which I mentioned in my letter of the 11th of August, was predicated upon the unusually severe and destructive service required of the boat, and General Worth intended, I think, to accomplish his promise by directing me to make a new charter. The want of other steamers suited to our purposes, and the exigencies of the service at the time, rendered it necessary to run the James Adams so constantly that I remember stating to General Worth on one occasion that his orders had not permitted the boilers of the boat to cool for twenty-five days. Part of the time mentioned in my letter of the 11th of August it was found necessary to employ the steamer on the upper Colorouhatchie river, where, in a narrow, tortuous stream and overhanging live-oaks, the boat received great injuries. The service demanded of the boat during the last five months of 1841 left it in such a condition that Mr. Stalker quite abandoned the idea of undertaking to repair the boat or refitting her, after being discharged, for any commercial purpose. In December, 1840, when I chartered the James Adams, it was in a fine condition, having just arrived from a northern shipyard, and the boat was then appraised, I think, at \$30,000. A year afterwards I am satisfied it could not have been sold for \$10,000. The rapid deterioration of the steamer, from the unusual service required of it, the promise of General Worth of an increased payment on that account, and the fact that Mr. Stalker would certainly have withdrawn his boat from the service if he had not expected the increase, make the payment of the claim, within the dates indicated in my letter of the 11th of August, a matter of common justice and good faith."

This claim has been before both houses of Congress. The Committee on Claims of the Senate, at the second session of the thirtieth Congress, reported in favor of the claim. A similar committee, at the first session of the thirty-first Congress, to which committee the quartermaster general made a report unfavorable to the claim, reported to the Senate against the claim, and the report was concurred in. The Committee of Claims of the House of Representatives, at the first session of the thirty-first Congress, reported against the claim, and the report was laid on the table.

Upon the best consideration we have been able to give the case, we have come to the conclusion that the claimant is entitled to recover. As the service, to procure which the promise was made, was not required by the charter party of the 28th of April, 1841, it cannot be said that the promise was without consideration. Neither can it be said that the promise was made without authority, it having been made by the commanding officer in the presence of the quartermaster. It would, no doubt, have been more regular if the general had caused a new charter party to be executed; but still, as the unusual service was performed in consequence of the promise, it seems to be proper that the government should pay for it.

The charge for the service from the time of the promise to that of the discharge of the boat is \$5,645 16, for which sum we report a bill.